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A Legal Examination on Russia's Threat on the Use of Nuclear Weapons during the Invasion of Ukraine based on the Applications under International Law

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Abstract: *The purpose of this research hopes to provide viewers further awareness and contributions that promote the abolishment of nuclear weapons. The issue the researcher has found include what are the legal applications and laws regarding the threat and use of nuclear weapons. The research method used is doctrinal legal research which aims to examine and analyze the norms that govern the threat and use of nuclear weapons based on existing laws. The findings of this research include various regulations and treaty's such as the Non-Proliferations Treaty which establishes the recognition of nuclear and non-nuclear weapon states, as well as the limits on the use of nuclear weapons, The Comprehensive Nuclear Test Ban Treaty is an agreement which aims to limit the development and testing of nuclear weapons, and most recently the Treaty on the Prohibition of Nuclear Weapons which prohibits nuclear weapons. However, the results have shown that the current laws are insufficiently enforceable and mainly agreed upon under good faith. President Putin's threats to nuclear warfare and the transfer and stationing of nuclear weapons to Belarus are evidence for further developments and amendments to the treaties in addressing this problem.*

Keyword: *Nuclear Threats, Ukraine-Russia conflict, International law.*

INTRODUCTION

The depiction of the atomic bomb portrayed in the biographical movie *Oppenheimer* shows no exaggeration to the reality of the devastation and irreparable consequences regarding the historic events which played in Hiroshima and Nagasaki back in 1945. The detonation of both nuclear bombs had not only brought the complete annihilation of both cities, but including the indiscriminate annihilation by the hundred thousands of the Japanese people whom resided in those regions, notwithstanding the following months of nuclear radiation and the generational implications that come with it (Mecklin, 2023).

A nuclear weapon is defined as an explosive device that derives its immense destructive force from fusion or fission reactions of small matter. These reactions would produce a

thermonuclear explosion described by intense light and heat, followed by shockwaves that can reach kilometers from initial impact. The explosion itself forms a large fireball in the form of mushroom like smoke that causes further ignition and severe burns. Furthermore, the United Nations describes nuclear weapons as “weapons of mass destruction,” as the effects cause immediate devastation and long term environmental and health consequences. Other types of weaponry which characterizes as weapons of mass destruction include biological and chemical weapons (Nystuen et al., 2014).

Unlike the biological and chemical variants which are unconditionally prohibited under the 1993 Chemical Weapons Convention and the 1975 Biological Weapons Convention, nuclear weapons remain as one of the most controversial and have yet to effectively be prohibited under international law. Many reasons could have contributed to such ambiguity for complete abolition, such as the theory on nuclear deterrence, the precedent of the United States in dropping the atomic bombs, global economy and security, so on and so forth. As a matter of fact, many nations still possess nuclear weapons to this day such as China, North Korea, the United States, the United Kingdom, and Russia (Prawitz & Leonard, 2024).

Most of the established treaties and agreements regarding the threat of nuclear weapons are non-binding or have the enforceability to whom those violate. In other words, those treaties and agreements came in the form of unilateral understanding and good faith. Following the aftermath of the atomic bomb, the legality on the threat and use of nuclear weapons was first put into motion under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) which addresses the limitation and accessibility to nuclear weapons, as well as the categories of Nuclear and Non-Nuclear weapon states. In 1996, The International Court of Justice issued an advisory opinion for all participating states, although the court and participating states have collectively recognized the contradictions to humanitarian law regarding the use of nuclear weapons, the court did not decisively determine if the such a use is legal, particularly for self-defense purposes. However, in 2017, the latest treaty known as the Treaty on the Prohibition of Nuclear Weapons has clearly outlined the prohibition of development, testing, possession, use, or threat of the use of nuclear weapons. However, it’s worth mentioning that none of the major nuclear weapon states have yet to ratify it, and thus making the current treaty obsolete.

Nevertheless, the major deciding factor that the legitimacy of nuclear weapons and the application in the use of nuclear weapons are laid through its destructive characteristics which are otherwise prohibited by *lex generalis*. Those include the UN Charter, the Geneva Conventions and its protocols, and the International Humanitarian Law and its principles.

On 24 February 2022, Russian President Vladimir Putin declared a full scale war to Ukraine on the basis of the alleged acts of genocide Ukraine has committed to the Donetsk Peoples Republic (DPR) and the Luhansk Peoples Republic (LPR), both of which are regions of Ukraine annexed by Russia in 2014 and are still an unrecognized state by the United Nations to this day. In his announcement, President Putin initiates a “special military operation” with the purpose to “denazify and demilitarize” Ukraine through the use of force. Furthermore, President Putin warns against the intervention in Ukraine from outside or of a direct attack on Russia would be responded immediately with consequences “such as you have never seen in your entire history”, a rhetoric phrase which may interpret the use of weapons of mass destruction. This announcement was soon followed by a barrage of airstrikes launched through a wide range of forefronts between the Ukraine-Russian border. (Horovitz, 2022)

Moreover, the Russian president and his officials have made numerous public statements which portray as rhetoric interpretation to the Russian state’s willingness in enforcing the threat to use weapons of mass destruction. On 27 February 2022, President Vladimir Putin has ordered their national nuclear forces to move their nuclear status on high alert. A response issued due to the escalating economic sanctions and “aggressive statements”

placed by members of the North Atlantic Treaty Organization (NATO), an organization which has contentious relationship with the Russia since the Soviet Union. On 20 April 2022, Russia tested its latest Intercontinental ballistic missile (ICBM). In another instance in 21 September 2022, President Putin stated that “in the event of a threat to the territorial integrity of Russia, [that they] will readily employ all of our weapon systems available to use, [a statement that is ascertained to be] not a bluff”. On 16 June 2023, President Putin references the use of the atomic bombs in Hiroshima and Nagasaki are precedents created by the United States in using nuclear weapons (Giles 2023).

In 2 June 2020, President Putin signed a decree known as the “Fundamentals of Russia’s Nuclear Deterrence State Policy”. This decree explains and identifies the potential threats that Russia may act upon the use of nuclear weapons as a form of deterrence, a policy based on the United Nations Charter which allows a State’s right to Self-Defense. However, the extent of the applications and capabilities on the use of force in the context of self-defense are limited to the applicable principles, treaties, and conventions which those states have ratified. In terms of “nuclear deterrence”, no applicable conventions nor treaties have Russia ratified which otherwise would make such a policy outright illegal (Sokov, 2020).

Russia’s state ally, Belarus, has supported Russia’s engagement in using nuclear weapons based on the Treaty on the Establishment of the Union State which includes the establishment of security and defense integration between both states. Following the year of the invasion, Belarus has been involved with transferring, stationing, and training of Belarusian military in conducting nuclear deployment and testing, more specifically, the deployment of Iskander-M missiles and the Su-25. This act was proven by the constitutional amendment of Belarussia which removes the state’s non-nuclear status (Champchesnel, 2023)

In response to the actions taken by Russia and Belarus, NATO Secretary General Jens Stoltenberg on 16 June 2023 stated on behalf of the NATO alliance that they will take the necessary precautions and closely monitor the progressions of Russia’s nuclear deployment to Belarus, furthermore stating that “this is part of nuclear messaging and nuclear rhetoric we have seen over some time, a part of pattern we have seen over the years”. On the other hand, the United Kingdoms, permanent Representative to the United Nations, James Kariuki have said that President Putin has used “irresponsible nuclear rhetoric”, affirming that no other country has raised the prospect of nuclear use in the Ukraine-Russia conflict. Likewise on that regard, James Kariuki expresses that President Putin’s attempts of nuclear threat are an act of intimidation and coerce, and that the United Kingdom will continue to support Ukraine’s efforts to defend itself (Mills, 2023)

As mentioned previously, Russia has been recognized by the international community in possessing, and stockpiling nuclear weapons. This was proven by the signatory of the state under the Treaty on the Non-Proliferation of Nuclear Weapons. In one instance within the agreement, Post-soviet Ukraine agreed to transfer all the remaining nuclear weapons stationed in Ukraine back to Russian territory in exchange of the assurances of Ukraine’s independence and sovereignty from Russia and western states in 1994, this is also outlined in the Budapest Memorandum and the Helsinki Final Accords agreement.

Statistically, Russia possesses an estimate of 5,500 nuclear warheads as of 2024, which is recognized as the largest stockpile of nuclear weapons for a single state globally. Although most of the nuclear warheads were the remaining weapons once developed during the Cold War and assumingly idle for dismantle, but it is estimated that 1,700 of which are readily stationed in the event of a subsequent launch (Kristensen, 2024).

Based on the findings mentioned above, this research is conducted with the purpose to study and analyze the legal application on the threat and use of nuclear weapons in the event of armed conflict, more specifically the ongoing armed conflict between Ukraine and Russia. The novelty of this research is provided through the findings and explanation of the

developments and progressions on the applicability of international law regarding the threat and use of nuclear weapons. Finally, the researcher hopes this research can provide the viewers further awareness on the consequences and contribute to further research developments that promote the total disbandment of nuclear weapons.

METHOD

The Methodology applied in this paper will use legal normative research. This type of research derives in finding matters that indicates a real situation which applies the current legal laws through judicial judgement and the relevant statutes. There are two main aspects in legal sources which include primary and secondary source. The primaries include statute's and treaty's and court documents. The secondaries may include literature, scholarly journals and articles, as well as the world wide web (WWW). All of these sources should be relevant to the topic issues on the legal examination on the threat to the use of nuclear weapons, particularly in regards to the Ukraine and Russian war under international law (Ballin, 2020)

Based on the researcher's findings, such examples include the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Comprehensive Nuclear Test Ban Treaty (yet to be enforced), the United Nations Charter, Treaty on the Prohibition of Nuclear Weapons, and other general laws such as the Geneva Conventions and Their Additional Protocols, and International Humanitarian Laws and its principles such as the Principles of Distinction and Proportionality.

Furthermore, this study will utilize analytical descriptive quality which aims to pinpoint the attributes of a particular situation. This process includes gathering and analyzing data in the form of text, image, and other non-mathematical types of data. The purpose of a descriptive quality produces the questions of who, what and where for certain specific event (McConville, 2017). Based on the topic, the researcher seeks to find what are the legal basis on the threat and use of nuclear weapons and what are the humanitarian implications relevant to the topic at hand?

The research approach used in this paper will employ a case study approach. This approach is characterized as an in-depth, explanatory, and analytical investigation using qualitative research methods to examine a specific sociological event. Thus, the focus scope of this research will exclusively revolve around the relevant laws on nuclear weapons based on the threats of nuclear attack used during the armed conflict between Ukraine and Russia that had begun in 2022 (Orum et al., 1991).

RESULTS AND DISCUSSION

Implications On The Use of Nuclear Weapons

Based on the atomic bomb set in World War II, the implications on the detonation of nuclear weapons are characterized in two aspects, the short-term and long-term effects. The short-term effects immediately follow the initial impact of the nuclear weapon produces exponential heat as well as radioactive properties including gamma ray. A thermal flash forms in the center of impact that causes magnifying effects of radioactive incendiary. This reaction would extend to about 1.5 kilometers, indiscriminately destroying everything within its vicinity (Nystuen et al., 2014).

What's unique about nuclear weapons from other conventional weapons are the long-term effects of nuclear fallout. Radioactive contamination that could last for decades, contaminating the surrounding environment and causing health problems such as radiation sickness, genetic damage, and risks of cancer that would also contribute to future generations. This can cause unnecessary suffering and disproportionality to the victims who didn't contribute nor participated in the war (Prawitz. 2024).

In the context of warfare, the main goal of a conflicting state is to gain military and tactical advantage over another state. Causing needless harm and violence are subject to the

principles of International Humanitarian Law (IHL). Those principles include the Principle of Distinction, the Principle of Proportionality, Prohibition of Indiscriminate Attacks, and the Principle of Unnecessary Suffering (Maresca, 2015).

Based on the Principle of Distinction, the use of force by a state and its combatants are required to distinguish between military objectives and civilian objects. The Principle of Proportionality prohibits attacks that cause excessive civilian casualties in relation to the expected military advantage. The IHL also prohibits indiscriminate attacks that provide no specific military objective. Lastly, the Principle of Unnecessary Suffering outlines of combatants in causing unnecessary suffering to combatants, such as prisoners of war or an incapacitated combatant (*hors de combat*). In light of the characteristics of nuclear weapons and the principles thereof, the vast destruction, indiscriminate nature and long-term radiological effects to the environment and its people are prohibited and protected under IHL.

However, the leading cause for the existence and armament of nuclear weapons are contributed by Nuclear Deterrence. This theory establishes that the threat on the use of nuclear weapons by one state would be deterred if by another state has the capacity to counter such force with the same amount of devastation. Hypothetically meaning that both states would be annihilated by nuclear weapons, thus in the national interest to preserve the sovereignty of either state, both would mutually be assured from illogical mass destruction (Awaru, 2022).

Nevertheless, Nuclear deterrence provides no more than a psychological insurance to one's own state. These insurances does not prevent disasters or eliminate complications of ensuing nuclear warfare. Deployment and stationing of nuclear weapons sustains an atmosphere of hostility and distrust between States. Notwithstanding the associated risks of false warning, miscalculation and nuclear accidents, what's more the long-term environmental impacts and the uncertainty of the international community, particularly towards non-nuclear states. This is exemplified by Russia's transfer of nuclear weapons to Belarussian territory in June 2023.

The Regulations Under International Law

Established in 5 March 1970, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was the first recognized international treaty that specifically outlines the legality and the distinction of Nuclear weapons. As of 2024, there are 190 contracting states whom ratified the treaty, including most of the recognized nuclear weapon states including Russia.

In the treaty, all contracting members must abstain within their diplomatic relations from ensuing the threat to use of force against the defined territory or sovereignty of any State, or in any other methods which contradict with the basic principles of the United Nations and the UN Charter, that under the collective purpose is to establish and maintain international peace and security.

Article 1 of the NPT addresses the prohibition of transferring nuclear weapons to any other state both directly or indirectly, and not in any way assist, encourage or induce any non-nuclear weapon state to manufacture or acquire nuclear weapons. Article II reaffirms the previous article by stating each non-nuclear weapon state party to the Treaty undertakes not to receive the transfer of nuclear weapons or explosive devices of control over such weapons, nor manufacture or gain assistance in acquiring such weapons.

However, Russia has blatantly transferred and stationed its nuclear weapons to Belarus which is a clear violation to the NPT. Russia interpretes this claim by stating that Belarus has no control over the use of the nuclear weapons in its territory, as well as the amendment of Belarus' constitution of withdrawing its non-nuclear status does not violate the NPT. Russia also accuses that the western alliance NATO has done the same regarding "nuclear sharing". Addressing the nuclear weapons of the United States and United Kingdom in storing and delivering nuclear weapons to other NATO members.

Furthermore, there are no clear consensus which punishes states who violate the NPT and instead agreed upon under good faith. Based on article V, contracting members shall acknowledge for peaceful applications based on the treaty which benefits both nuclear and non-nuclear states by taking the appropriate measures under the basis of international observation and procedures. Article VI ensures that contracting members to the treaty would commit under good faith, on effective policies and procedures regarding to the minimalization of the nuclear arms race as well as disarmament of such weapons at the earliest time and under strict international monitorization.

In response to Russia's actions, Lithuania has imposed sanctions against Russia on goods that may otherwise support Russia's war efforts with Ukraine, those include coal, metal, construction materials and advanced technology effective on 17 June 2022 (Janeliunas, 2023).

Following the NPT, the Comprehensive Nuclear-Test Ban Treaty (CTBT) is an international agreement which establishes the elimination of nuclear testing which released on 24 September 1996. The CTBT aims to reinforce the NPT by decelerating the nuclear arms race through the established limitations of the treaty in the developments and disarmament of nuclear weapons. However, it should also be mentioned that the CTBT has not taken into effect as key ratifiers by recognized nuclear states such as the United States and China are required. Nevertheless, the treaty itself establishes the norms and framework that promotes an indirect consensus that limits the testing of nuclear weapons.

The basic obligations to contracting members of the treaty are laid in Article 1. The article demands that all member states shall abstain from conducting nuclear weapon test explosions or any other kind of detonation. This commitment also extends beyond their borders as they are obligated to prohibit and prevent such activities from happening within their jurisdiction or control.

Furthermore, the treaty does not only conform under good faith, but also establishes the measures of compliance and sanctions to those who violate the treaty under article V. Through the organs established within the treaty and within the attention of the United Nations, problems that may arise with regard to the compliance and failure to fulfil the treaty by a state, that they have the right to restrict or suspend the violating states' rights and privileges as well as the collective measures which are in conformity with international law. Additionally, member states of the treaty have the right to withdraw its signatory with the purpose of exercising its national sovereignty in which under extraordinary events that could make the treaty jeopardize the states national interest under article VI.

In the context of the Ukraine and Russian conflict, Russia has since withdrawn its ratification of the treaty in 2 November 2023. Russia claims this move was justifiable as other nuclear weapons states like the United States have yet ratified the same treaty, stating "We cannot confirm at this time whether we will or need to carry out [nuclear weapon] tests. However, we will act in the same position as the United States [on the same regard]". Furthermore, Russia claims that the intervention of NATO countries are responsible for fueling the conflict, this was proven by the accession of new NATO members such as Finland and Sweden that followed as a result of the war. Following the withdrawal of CTBT, Russia's Ministry of Defense have announced its initial test launch of an Intercontinental Ballistic Missile(ICBM) on April 12, 2024, stating that "the test launch was conformed to satisfy the tactical, technical, and flight requirements for the modern missile system. All of which have been fulfilled and complete".

Enforced in 22 January 2021, the Treaty on the Prohibition of Nuclear Weapons (TPNW) or the Nuclear Weapon Ban Treaty provides the first and only international treaty which specifies the complete prohibition on the development, testing, production, stockpiling, installment, transfer, usage, and the threat to use nuclear weapons including the aid and support to such activities stated. The TPNW was previously brought by the UN Resolution

71/258 which expresses the urgency of the consequential humanitarian risk of further development and existing nuclear weapons as well as the call for the total disarmament of nuclear weapons.

Article 1 of the TPNW addresses the acts prohibited on nuclear weapons whereby each contracting party shall be prohibited from any activities which may include the (1) development, production, testing, acquire and/or possess nuclear devices; (2) transfer or receiving them; (3) using or threatening to use them; (4) assist and support others to do the activities stated previously; (5) seeking assistance or encouraging others to do such activities stated; and (6) allowing such weapons to be stationed within their territory.

Based on the aforementioned article, contracting parties have the state obligation to refrain oneself and discourage non-State Parties on the usage and activities related to nuclear weapons. Through such obligations of the Treaty, contracting members of TPNW have also the right to receive and help facilitate the implementation of prevention and provide assistances to affected victims from the use or testing of nuclear weapons from other States under article 7 on international cooperation and assistance.

However, 127 out of the 197 state members of the UN have yet to sign the treaty, including the major and recognized nuclear armed states which include the United States, Great Britain, France, and members of the North Atlantic Treaty Organization (NATO), along with China and Russia as of January 2024. Based on article 17, current members of the State Party shall have the right to withdraw from the TPNW if in the extreme occasion whereby events related to the subject matter of the Treaty have the possibility in which jeopardizes the national sovereignty of the State. This could mean that contracting parties to the treaty may at any time request the withdrawal and forfeiture of their obligations and rights to which the State may otherwise conduct activities which violate article 1 of the treaty stated.

Nevertheless, the recognition and enforcement of the TPNW provides a legal binding source of international law and hails as a historic land mark for the complete extermination of nuclear weapons. This treaty itself does not prejudice existing international agreements such as the well-established NPT, as well as other conventions and principles of IHL which are consistent to TPNW. Member States may also propose amendments to the United Nations which could further strengthen and define the latest treaty in due time.

During the Second Meeting of States Parties to TPNW held on 1 December 2023, Head of the German Commissioner for the Disarmament, Nonproliferation and Arms Control, Susanne Riegraf, has regarded Russia's aggression against Ukraine's sovereignty, as well as Russia's nuclear threats are the basis as to which Germany and members of NATO could not accede the TPNW. However, Germany is committed to negotiate with other members and support the Treaty to universally ban nuclear weapons as long as the obstacles and conditions based upon Russia's threat and mobilization of nuclear weapons are stopped. (TPNW, 2023).

Although the prohibition and complete abolition on the threat and use of nuclear weapons have yet been universally established, the characteristics of a nuclear detonation and its effects could violate general laws.

For instance, Article 2(4) of the UN Charter tells member of the UN to avoid the use of force or threats in regards to their diplomatic relations. This applies to activities which may ham another states' established territory or independence, or in other circumstances in which contradicts the goals of the UN.

Article 3 of the Geneva Convention IV prohibits violence to life and person which includes murder, mutilation, cruel treatment, and torture. The use of nuclear weapons and its indiscriminate nature could violate such acts against civilians. Article 48 of the Additional Protocol I state that parties to the conflict must at all times distinguish between civilian populations and military forces, as well as differentiating between non-military objects and military objectives. The use of nuclear weapons may also constitute a crime against

humanity, or more broadly a war crime, which are all under the jurisdiction of the International Criminal Court.

In particular to the situation in Ukraine and Russia, The Budapest Memorandum is an agreement signed by many states including Russia in 5 December 1994, whereby all participating states ensures Ukraine, Belarus, and Kazakhstan for their declaration to nuclear disarmament and accession to NPT, that the participating states agree to commit in respecting the sovereignty and independence of all signatories within their defined borders, emphasize the importance of peaceful relations by prohibiting any threats and use of force against the territorial integrity and sovereignty of those states, pledge that none of their weapons will be used offensively to one another with the exception of self-defense which are underscored with the United Nations, and finally, the agreement acknowledges that the existing legal framework of nuclear weapons would not be put against any non-nuclear state, unless such a scenario whereby a combined attack ensued by another state to whom is nuclear-armed.

CONCLUSION

Based on the Results and Discussion, nuclear weapons are regarded as weapons of mass destruction based solely on its destructive nature and the long-term implications of radioactive contamination which violates the principles of IHL. Nuclear weapons enact upon indiscriminately and indistinctively towards combatants and civilians as well as causing unnecessary harm. Nuclear deterrence is a theory in which portrays the existence that any state must have the same capacity to counter the nuclear threats and use from other states.

The existing treaties and agreements which prohibit or limit the use of nuclear weapons are the foundational grounds to which the international community have sought to preserve international peace and security from its usage. However, there are flaws and weak enforceability of the NPT, CTBT, and TPNW which has contributed to the nuclear threats by Russia and its president whom have been made throughout the Ukraine-Russian conflict. Furthermore, the successful transfer and stationing of nuclear weapons to Belarus from Russia is a warning call to the urgency in establishing peaceful resolutions and developments which may better strengthen and better enforce the laws on the threat and use of nuclear weapons and its abolishment.

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